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be deemed organized under the laws of the State within the intent of the taxing authorities.²⁸

THE SITUS OF INTANGIBLE PERSONAL PROPERTY FOR THE PURPOSE OF TAXATION.—The *situs* of personal property for the purpose of taxation is no longer determined by a strict application of the rule *mobilia sequuntur personam*. The rule is now regarded merely as one of convenience, which must yield when the *situs* is obviously not at the domicile of the owner.¹ As to tangible property, therefore, the rule is not often applied, the true *situs* in fact being easily ascertainable.² As to intangibles, however, which can have no actual *situs*,³ the rule is still generally applicable, and they are taxed at the domicile of the owner or creditor.⁴ An exception is recognized where the creditor has "localized" the debt or chose in action in a jurisdiction other than that of his domicile.⁵ Unfortunately "localization" has not been clearly defined, but it appears from the decisions that its elements usually are, first, the presence within the foreign jurisdiction of the papers evidencing the debt,⁶ and secondly, the employment there of the capital represented by the debts in a definite business, usually managed by an agent.⁷ The former is not essential, nor is it sufficient, except possibly in the case of specialties.⁸ The latter, however, is found in every case

²⁸The Appellate Division seems to consider as consistent with this doctrine its position that joint stock companies are creatures of contract, existing by virtue of articles of association and not by statute. *Matter of Willmer* (N. Y. 1912) 153 App. Div. 804, 138 N. Y. Supp. 649; *Spraker v. Platt* (N. Y. 1913) 158 App. Div. 377, 143 N. Y. Supp. 440.

¹*Board of Assessors v. Comptoir National* (1903) 191 U. S. 388, 404, 24 Sup. Ct. Rep. 109; *Liverpool Ins. Co. v. Orleans Assessors* (1911) 221 U. S. 346, 354, 31 Sup. Ct. Rep. 550.

²*Union Transit Co. v. Kentucky* (1905) 199 U. S. 194, 26 Sup. Ct. Rep. 36; *D. L. & W. R. R. v. Pennsylvania* (1904) 198 U. S. 341, 25 Sup. Ct. Rep. 669; discussed in 6 *Columbia Law Rev.*, 190.

³*Hawley v. Malden* (1914) 232 U. S. 1, 34 Sup. Ct. Rep. 201.

⁴*Kirtland v. Hotchkiss* (1878) 100 U. S. 491. Conversely, the state may not tax intangibles held by a non-resident, even though the debtor is within the jurisdiction. *State Tax on Foreign-held Bonds* (1872) 82 U. S. 300. See 5 *Columbia Law Rev.*, 50.

⁵*Metropolitan Life Ins. Co. v. New Orleans* (1909) 205 U. S. 395, 27 Sup. Ct. Rep. 499, discussed in 7 *Columbia Law Rev.*, 531. *Catlin v. Hull* (1849) 21 Vt. 152. The rule of "localization" as interpreted by the Supreme Court is discussed in an article by William Cullen Dennis in 15 *Columbia Law Rev.*, 377.

⁶*Board of Assessors v. Comptoir Nat., supra*; *New Orleans v. Stempel* (1899) 175 U. S. 309, 20 Sup. Ct. Rep. 110.

⁷*Metropolitan Life Ins. Co. v. New Orleans, supra*; *Bristol v. Washington Co.* (1900) 177 U. S. 133, 20 Sup. Ct. Rep. 746.

⁸*Buck v. Beach* (1907) 206 U. S. 392, 27 Sup. Ct. Rep. 712, discussed in 7 *Columbia Law Rev.*, 531. Justice Day dissented, on the ground that negotiable paper, like a specialty, was the property itself, and therefore capable of acquiring a *situs* by mere presence in the jurisdiction, a view supported by a few previous dicta. See *New Orleans v. Stempel, supra*, at p. 322. In *Wheeler v. New York* (1914) 233 U. S. 434, 34 Sup. Ct. Rep. 607, the decision in *Buck v. Beach, supra*, is explained on the ground that the notes were only temporarily in Indiana, thus inclining towards the view of Justice Day. A majority of the justices, however, refused to recognize this theory.

and is probably necessary because protection is the consideration for taxation,⁹ and unless the property is receiving substantial protection as in the case of a business, taxation is taking property without due process of law.¹⁰

The creditor is, of course, none the less subject to taxation because he holds the debt as trustee. The legal title to the debt is present at his domicile and is there taxable if the State so declares.¹¹ In the recent case of *Welch v. City of Boston* (Mass. 1915) 109 N. E. 174, a court of Maine appointed the plaintiffs, residents of Massachusetts, trustees for certain beneficiaries domiciled in California, the *corpus* of the fund being stocks and bonds of corporations foreign to Massachusetts and deposited in Maine. These stocks and bonds were taxed in Massachusetts under a statute expressly covering such a case. The tax having been paid, the trustees sued to recover it back, but the courts held that the statute was valid as the *situs* of the property was at the domicile of the creditors, the trustees. An apparently inconsistent result has been reached in a few jurisdictions under similar facts, upon two theories. It is said that a trustee appointed, not by the will of the testator, but by the court of his domicile, cannot exist in his official capacity outside of that jurisdiction. The real trustee is the court of administration, and the appointee is therefore not taxable at his domicile because as an individual he does not hold the legal title to the trust property.¹² The more plausible doctrine is that the debt has been localized outside of the jurisdiction of the trustee's domicile, and therefore has no taxable *situs* within the state.¹³ It does not appear in the principal case, however, that the bonds and stocks were being employed in Maine in the course of any business sufficient to localize them there, while their mere deposit there is admittedly insufficient.¹⁴ The decision is therefore justifiable on legal grounds, although from an equitable standpoint the protection furnished by the government of Massachusetts appears to be disproportionately small in comparison to the correlative tax. This fault, however, is inherent rather in the policy of the statute than in its constitutionality.

A more difficult question arose soon after the above decision, and in the same jurisdiction, in the case of *Bellows Falls Power Co. v. Commonwealth* (Mass. 1915) 109 N. E. 891. A statute of Vermont declared that for purposes of taxation the *situs* of shares of stock in all Vermont corporations should be at the home office of the corporation in Vermont. The plaintiff, a resident of Massachusetts, was there taxed on shares of stock which he owned in a Vermont corporation. His petition for the recovery of the tax so paid was dismissed, the court holding that the statute was valid. There was a quality of property in the shares, which was present only at the domicile of the owner, and

⁹*Diamond Match Co. v. Ontonagon* (1902) 188 U. S. 82, 23 Sup. Ct. Rep. 266.

¹⁰*Union Transit Co. v. Kentucky*, *supra*.

¹¹*Price v. Hunter* (C. C. 1888) 34 Fed. 355; 1 Cooley, Taxation (3rd ed.) 660.

¹²*Lewis v. Co. of Chester* (1869) 60 Pa. 325; *Guthrie v. Pittsburgh etc. Ry.* (1893) 158 Pa. 433, 27 Atl. 1052; *Goodsite v. Lane* (C. C. A. 1905) 139 Fed. 593; discussed and criticized in 6 Columbia Law Rev., 127.

¹³*Hawk v. Bonn* (1892) 6 Ohio C. C. 452.

¹⁴*Buck v. Beach*, *supra*; see *Kennedy v. Hodges* (1913) 215 Mass. 112, 114, 102 N. E. 432.

being within the jurisdiction was subject to the inherent right of the sovereign to tax. The decision results in economic double taxation which can be remedied only by the legislature.¹⁵ On the one hand, the right of Vermont to tax these shares is well established and rests on the right of the sovereign in creating a corporation to impose reasonable regulations, of which this statute is one.¹⁶ On the other hand, Massachusetts cannot be deprived of its right to tax property within its jurisdiction by the legislation of any other state.¹⁷ The value of the right of the owner against or in the corporation, as evidenced by the shares, is in no way diminished by the Vermont statute, and the quality of property in them is therefore still attached to the owner and taxable at his domicile. The undesirable result of the decision can be avoided only by the exemption of such property in one state when taxed in another.¹⁸

THE RIGHT OF ABUTTING OWNERS TO DAMAGES FOR THE VACATION OF STREETS.—Power to vacate a public highway belongs exclusively to the legislature, and neither the motives nor the discretion of the proper authorities is subject to review by the courts.¹ Jurisdiction may be claimed, however, if there is an issue as to whether the discontinuance was for public or private use, for the power can be exercised only in order to subserve public welfare.² There is a presumption that the closing of the street by the legislature or a municipal corporation was for public use.³ This presumption may be refuted, however, and the

¹⁵This is sometimes called "duplicate" taxation. Taxation is double in the legal sense only when both taxes are imposed by the same jurisdictions. *Judy v. Beckwith* (1908) 137 Iowa. 24, 114 N. W. 565. The imposition of the transfer tax upon the same property by two states is not unconstitutional. *Blackstone v. Miller* (1903) 188 U. S. 189, 23 Sup. Ct. Rep. 277. In *Kidd v. Alabama* (1903) 188 U. S. 730, 732, 23 Sup. Ct. Rep. 401, the court said: "No doubt it would be a great advantage to the country and to the individual States if principles of taxation could be agreed upon which did not conflict with each other, and a common scheme could be adopted by which taxation of substantially the same property in two jurisdictions could be avoided. But the constitution of the United States does not go so far".

¹⁶*Wiley v. Commissioners* (1892) 111 N. C. 397, 16 S. E. 542; *Corry v. Baltimore* (1905) 196 U. S. 466, 25 Sup. Ct. Rep. 297.

¹⁷*Kidd v. Alabama*, *supra*; *Judy v. Beckwith*, *supra*; *Central of Ga. Ry. v. Wright* (C. C. 1908) 166 Fed. 153; *State v. Nelson* (1909) 107 Minn. 319, 119 N. W. 1058; *Dyer v. Osborne* (1876) 11 R. I. 321. The Massachusetts statute in the principal case was declared valid in *Hawley v. Malden*, *supra*. A state may tax stock certificates of a foreign corporation even though the state of incorporation exempts them from taxation. *Appeal Tax Court v. Gill* (1878) 50 Md. 378.

¹⁸This principle is illustrated in *Lockwood v. Weston* (1891) 61 Conn. 211, 23 Atl. 9; *State v. Ross* (1852) 23 N. J. L. 517; *People v. Campbell* (1893) 138 N. Y. 543, 546, 34 N. E. 370.

¹The authority may be delegated to municipalities, in which case strict compliance with the statute is necessary. *People v. Atchison, Topeka & Sante Fe Ry.* (1905) 217 Ill. 594, 75 N. E. 573; *Smith v. City of Centralia* (1909) 55 Wash. 573, 104 Pac. 797. See also 3 Dillon, *Municipal Corporations* (5th ed.) § 1160.

²*Van Wetsen v. Gutman* (1894) 79 Md. 405, 29 Atl. 608.

³*Henderson v. City of Lexington* (1909) 132 Ky. 390, 111 S. W. 318.